

the Howard League for Penal Reform

Early Career Academics Network Bulletin

June 2012 – Issue 15

Contents

	Page
1. Introduction Anita Dockley, Research Director	2
2. News	3
3. Members' notice board	6
4. Features	
Young people's attitudes towards and experiences of domestic abuse: How are they connected? Prof David Gadd, University of Manchester; Dr Claire Fox, Keele University; and Dr Mary-Louise Corr, University of Manchester	7
Hearing the unheard voices David Woodger, Goldsmiths College, University of London	12
'In defence of the defence': Why the counsel for the accused deserve more academic attention Dr Tom Smith, Plymouth University	15
5. Member profile: Gemma Anslow, City University, London	19
6. Get involved	
Community Sentences Cut Crime conference	20
Book reviews	22

Introduction



The Howard League is now looking for entrants for its Research Medal. We launched the second search for excellent research which has both furthered the cause of penal reform and managed to have an impact on the non-academic community just last week. Does your work fit this bill? The inaugural research medal was awarded to Professor Shadd Maruna and Dr Anna King for their work on desistance. We have just published their paper *Once a Criminal, Always a Criminal: 'Redeemability' and the Psychology of Punitive Public Attitudes* in a collection with the other four pieces of research that received commendations from the judging committee.

The prize, along with the prestige, is £1,000 and a public lecture to discuss the research findings. I look forward to receiving many entries by the deadline of 9 January 2013. All information about the Research Medal is on the [Howard League's website](#).

The Howard League is going to be at the British Society of Criminology's annual conference in Portsmouth early next month. We are holding a panel session on Thursday 5 July at 11am to discuss the Howard League's range of work and opportunities for academics to engage with us. I will be on the panel along with one of our trustees, Dr Neil Chakraborti, and one of our ECAN members and author of our research, *No Winners*, Dr Julie Trebilcock from the University of Keele. Please come along and say 'hello'. Finally, I am also pleased that one of our ECAN members, Daniel Bear from the London School of Economics, was awarded the Howard League bursary this year. Congratulations to him.

I am also on the hunt for book reviewers. Have a look in the 'Get involved' section for more information.

Looking forward to meeting you at the BSC.

Best wishes

Anita Dockley
Research Director

News



Sex in prison

The Howard League has established an independent commission to consider sex in prison. It will consider three broad topics: i) consensual sex in prison ii) coercive sex in prison (e.g. harassment, intimidation, assault or bribery) iii) healthy sexual development in adolescents and whether this is possible in prisons. The Commission will be chaired by former prison governor and Howard League trustee Chris Sheffield (left).

Initial meetings are planned for Autumn 2012 with a series of briefings to follow in 2013. A final research report is intended for publication in 2014. More information about the Commission will be appearing on the Howard League's website soon.

'Crimbos' to replace Asbos

Home Secretary Theresa May has suggested in a White Paper *Putting victims first – more effective responses to antisocial behaviour* that Asbos should be replaced by criminal behaviour orders (dubbed Crimbos). The suggested reforms will replace 19 existing measures with six powers that target people, places and police powers. It proposes:

- A new Criminal Behaviour Order (CBO) will be used to ban an individual from particular activities or places.
- A civil Crime Prevention Injunction (CPI) will be brought in to give agencies an immediate power to protect victims and communities.
- Simpler powers to close premises that are a magnet for trouble and tougher action over 'nightmare neighbours' will be introduced.

The White Paper also introduces the concept of the community trigger power, whereby the public will have the power to demand the police take action if a complaint over antisocial behaviour is made by five or more households. This will be piloted in three areas: Manchester, Brighton and Hove and West Lindsey in Lincolnshire.

The Home Office says 'Crimbos' will be easier to enforce, but worryingly, repeated breaches of the new injunctions could result in those aged between 14 and 17 being ordered into custody. There is a real danger that the proposals will unnecessarily fast-track children into a legal process. The Howard League is extremely concerned about 'Crimbos', saying, "We know short prison sentences don't work. We would hope the government sees sense and drops this disproportionate response".

Votes for prisoners

MPs have overwhelmingly voted to keep the ban on prisoners voting, in defiance of a ruling by the European Court of Human Rights. This ruling has far-reaching implications for the UK and Europe as it potentially makes an earlier decision by MPs which does not allow those in prison the vote a breach of prisoners' human rights.



Andrew Neilson, Director of Campaigns at the Howard League for Penal Reform said, "One of the hallmarks of citizenship is the right to vote. If we want prisoners to return safely to the community, feeling they have a stake in society, then the right to vote is a good means of engaging individuals".

The ruling by the European Court of Human Rights will make it very difficult for the UK to further prolong or avoid changing the law. The Howard League will continue to campaign for the prisoners' right to vote.

Hugh Klare

The Howard League for Penal Reform is saddened to announce the death of Hugh Klare CBE, former Secretary of the Howard League from 1950–71. Hugh Klare's philosophy while engaged with the Howard League was to show equal concern for both prisoners and staff. In a summary of his professional attitude to the Howard League's work he once wrote that while he always wanted decent conditions, work and education for prisoners, he was equally concerned with the provision of good welfare and decent conditions for prison staff too.

Frances Crook, Chief Executive of the Howard League called Hugh Klare, "A major influence on the direction of penal reform" and said, "He was supportive and generous to me and I am grateful to him".

Crime and Courts Bill

The Howard League has provided a [briefing](#) for the second reading of the Crime and Courts Bill in the House of Lords, concerning the creation of the National Crime Agency (NCA) and tougher community sentences.

One of the operational commands of the NCA will be to protect children and young people via the Child Exploitation and Online Protection Centre (CEOP). The Howard League is disappointed that Bill does not also seek to correct the legal anomaly that has the effect that it is possible for young people to be



criminalised for activities connected to their commercial sexual exploitation, a topic which we will be publishing a report on in July.

The Bill also seeks to make changes to community sentences which the Howard League believes are unnecessary. We also have concerns about proposals which would see 'creative use of electronic monitoring' to track offenders. Our worry is that these new measures will see rehabilitative requirements replaced with mandatory punitive requirements and that ultimately this will result in more victims of crime as reoffending rates suffer.

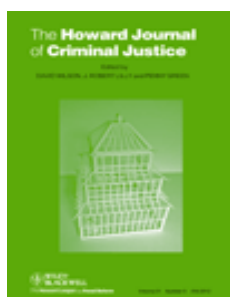
Electronic tagging

[The Probation Inspectorate's recent review of electronic tagging](#) that revealed that more than half of all those ordered to wear an electronic tag break the terms of their curfew was accompanied by the publication of another critical [report by NAPO](#).

The use of electronic tagging by courts has more than doubled in the last six years, with 80,000 people being tagged in 2010–11. However, Howard League Campaign's Director, Andrew Neilson, raised concerns over their increased use, saying, "The danger is that the tagging is used as a one-size-fits-all approach. We are concerned at the danger of over-relying on technology at the expense of tailored support with staff contact and interventions".

Embedding participation

The Howard League for Penal Reform has published its second evaluation on the UR BOSS project, [Embedding participation](#). UR BOSS was established to enhance the Howard League's legal service for children and to campaign to change national and local policy and practice. The report documents the development of the service, evaluates the Howard League's work against agreed outcomes and looks at the impact of youth participation on the Howard League's practices and outcomes.



Howard Journal of Criminal Justice

The [latest issue](#) of the Howard Journal of Criminal Justice has just been published online. Among the contributions to this issue is an article by Dr Carole McCartney from the Innocence Project at the University of Leeds which suggests that the UK has the 'world's largest forensic DNA database' and then questions whether it is lawful and whether human rights are being breached.

This issue also includes an opinion piece by Professor Tim Newburn which revisits the English riots one year on.

Members' notice board

Criminal Justice and Acquired Brain Injury Interest group conference

The Criminal Justice and Acquired Brain Injury Interest group (CJABIIG) are holding their first conference on **5 July 2012**. The theme of the conference is 'Stopping the Revolving Doors –Brain injury and offending', and is being hosted by St Andrews Healthcare in Northampton. Further information about the conference is available via the [conference booking form](#).



University of Greenwich Vice-Chancellor's PhD scholarship

The School of Humanities and Social Sciences at the University of Greenwich is offering a PhD scholarship. The project title is 'A criminological exploration of 21st Century London: Crime, place and space (or fear and loathing in London?)'. The closing date for applications is Friday 13 July 2012. For further information about the scholarship, visit the [university's website](#) or email Dr Richard Wild at r.wild@gre.ac.uk

Feature

Young people's attitudes towards and experiences of domestic abuse: How are they connected?

Prof David Gadd, Dr Claire Fox and Dr Mary-Louise Corr

It has become something of a truism in national prevalence studies of domestic violence that young people aged 16–25 are at greater risk of victimisation than those in older age groups. It is not known whether the risk of victimisation is greater still for adolescents below the age of 16. However, we know that domestic violence is a recurring theme in the home lives of many young people who end up in prison, which may suggest that persistent offending might be more effectively tackled if children were better safeguarded (Jacobson et al., 2010). In contrast, the domestic abuse education which is offered in some, but by no means all, secondary schools in the UK tends to begin with the assumption that young people are potential victims who need to be encouraged to disclose to adults. Much more must be known about young people's experiences of domestic abuse or dating violence, whether as victims, witnesses, or perpetrators.

We report here on the first wave of findings of the Economic and Social Research Council (ESRC) funded *From Boys to Men* research project,¹ a study which has involved a survey of young people's attitudes towards domestic abuse and their self-reported experiences of witnessing it, perpetrating it, and of direct victimisation. Participants involved in the study were aged 13–14 and attending mainstream schools in the North Staffordshire region. Half were exposed to a six week relationship education programme, the effectiveness of which was measured through a quasi-experimental study. This article is based on the findings of the whole sample of 1,143 young people who provided usable data in the survey at pre-test. The sample self-described as predominantly white (89%) and British (95%), and were drawn from a region known to have levels of social deprivation above the average for the UK as a whole and the West Midlands in particular. The majority of boys (81%) and girls (78%) who took part in the survey indicated that they had previously been in a dating relationship of some kind.

Dating violence is commonplace

Consistent with recent research conducted by the NSPCC (Barter et al, 2009) our research found rates of victimisation among those who had been on a date were in excess of what is ordinarily reported for adult populations living in European countries. Forty four per cent of boys and 46 per cent of girls reported having experienced at least one of the types of domestic abuse listed in Table 1 below.

¹ RES-062-23-2678

Responses to the question: 'Think about people you have dated, and past or current boyfriends or girlfriends' (victimisation)

Have they....	Once (%)	More than once (%)	In the last year (%)
1) Ever pushed, slapped or grabbed you?	12	4.6	58.5
2) Ever punched, kicked or choked you, or beaten you up?	3.5	1	72.2
3) Ever threatened to physically hurt you?	3.9	3	49.2
4) Ever pressured or forced you to have sex?	3.5	0.9	73.8
5) Ever pressured or forced you to do anything else sexual, including kissing, hugging and touching?	9	4.4	78.2
6) Ever called you nasty names to put you down?	14.2	10.9	63.1
7) Ever stopped you from seeing your friends or family?	2.8	2.7	67.4
8) Ever told you who you can't speak to?	13.3	5.4	68.5
9) Ever checked up on who you have phoned or sent messages to?	10.7	6.6	73.2
10) Ever damaged something of yours on purpose?	3.8	2	55.1

As the far right column indicates, most of these experiences of abuse had occurred in the last year. The most commonly reported experiences related to emotional abuse and controlling behaviours, with 38 per cent reporting at least one of these experiences (as measured by questions 6–9). Physical abuse was the next most common form of abuse, experienced by 17 per cent of the sample (questions 1 and 2), or 21 per cent if threatening behaviour and damage to property (questions 3 and 10) are deemed 'physical'. Sexual victimisation (questions 4 and 5) was reported by 14 per cent of those who had been on a date. When these results were contrasted with what is known about adult rates of victimisation, no statistically significant difference between girls' and boys' rates of victimisation was found. This included repeat victimisation, except with regard to sexual victimisation, where girls' experiences were significantly higher.

Girls reported as much perpetration as boys

No significant gender differences emerged with regard to the self-reported perpetration of domestic abuse. A quarter of girls and boys reported having carried out at least one of the abusive behaviours we listed. A fifth (20%) of respondents reported perpetrating emotional abuse and controlling behaviours; 7 per cent had perpetrated physical abuse (excluding threats and damage to property); and 4 per cent had perpetrated sexual abuse. Some caution is required, however, in the interpretation of this data. The number of boys (n=33) who opted out of the research – either themselves or at the request of their parents – was twice as high as the number of girls (n = 14) who opted out.

Witnessing or noticing?

Significant differences between boys' and girls' overall reports begin to emerge when examining the number of young people who had witnessed abuse at home between parents and adult carers. Thirty per cent of boys and 39 per cent of girls reported witnessing at least one of the types of abuse involving an adult who looks after them. Given that there is no real reason to expect the prevalence of domestic abuse to be higher in the homes of daughters than in the homes of sons, such differences in rates of 'witnessing' raise some rather tricky questions about the comparability of boys and girls self-reported victimisation and perpetration data. Are 13–14 year old boys in some ways more oblivious to violence at home than girls of a similar age? Are girls more sensitive to what counts as abuse – especially in its less injurious and/or more emotional forms – i.e. they simply notice it more, or are more likely to be alerted to it by one of their parents?



Divergent realities?

Almost 27 per cent of girls reported witnessing physical abuse between adults who care for them compared with 20.3 per cent of boys; for emotional abuse and controlling behaviour, the figures were 33.7 per cent for girls and 21.6 per cent for boys. It can only be speculated as to why this was, but the study of the same children's attitudes to domestic violence suggests some reasons. Participants were presented with 12 different scenarios in which they were asked if it was 'acceptable' for a man or woman to hit their wife/husband in certain circumstances. We found that 49 per cent of boys compared with 33 per cent of girls thought hitting would be acceptable in at least one of the scenarios circumstances. Specifically:

- 17.5 per cent of boys thought it was acceptable for a man to hit his partner/wife if she has hit him, compared to 11.5 per cent of girls.
- 10.2 per cent of boys of girls thought it was acceptable for a man to hit his partner/wife if she has cheated on him, compared to 6.9 per cent of girls.
- 30.4 per cent of boys thought it was acceptable for a woman to hit her partner/husband if he has hit her, compared to 18.4 per cent of girls.
- 18.2 per cent of boys of girls thought it was acceptable for a woman to hit her partner/husband if he had cheated on her, compared to 9.6 per cent of girls.

What this tells us is that less boys than girls regard hitting your partner as wrong, or as synonymous with 'real' violence. Perhaps more boys see hitting as something that just happens in their own relationships and in those of their parents? Certainly, the circumstances in which hitting is regarded as most justifiable are fairly commonplace ones, likely to arise, unfortunately, in many young people's early dating relationships. In short, boys tend, firstly, to

perceive less violence at home, and secondly to perceive more of what they do see as acceptable in certain relatively commonplace circumstances.

Interestingly, those who had experienced domestic abuse – whether as victims, witnesses or perpetrators – were more likely to think that violence was acceptable than those who had not. Those who had experienced it in some form were less likely to say they would seek help from an adult than those who had not. Only 38.6 per cent of those who admitted to having perpetrated abuse said they would seek help if they were exposed to hitting from a partner, compared to 61.4 per cent who disclosed no perpetration. Those who had been victims of domestic abuse were also less likely to seek help in comparison to those who said it had never happened to them (40% in comparison to 55.7%), as were those who had witnessed it (44.2% of witnesses compared to 54.1% of non-witnesses), compared to those who had not witnessed abuse within the family. In sum, many of those living with recent experiences of violence had come to the view that they would deal with it without the help of adults if it occurred in their own dating relationships. Boys (33.3%) were generally much less likely than girls (67.5%) to seek help from an adult should they be exposed to hitting in a relationship themselves.

Culpable victims?

One possible reason for this reticence may have something to do with young people's perceptions of the extent to which they are somehow culpable, as it was not easy to identify discrete groups of respondents who were only victims, witnesses or perpetrators within our dataset. The vast majority (92.3%) of perpetrators reported that they had been victimised by a boyfriend or girlfriend. For young people who had perpetrated abuse, the odds of also being victimised were 32 times higher than the odds for those who had not been abusive. For those who had witnessed abuse, the odds of perpetrating abuse were three times higher than for those who had not witnessed abuse. There were also overlaps in the population of victims and witnesses. 67 per cent of those who had witnessed abuse at home had also experienced it in their own dating relationships, compared to 32 per cent who had not witnessed it. The odds of experiencing abuse if they had witnessed abuse were 4.5 times higher than the odds for those who had not witnessed abuse.

Implications

Over half of the young people in the study had had some direct experiences of domestic abuse, whether as victims, witnesses, or perpetrators. Much of this had been recent. Thus, the attitudes of a sizeable minority of 13 and 14 year olds were already coloured to a certain extent by direct experiences of domestic abuse: many having witnessed, experienced and perpetrated domestic violence. Involvement in perpetration may actually make it harder to condemn the violence of others. Such dynamics appear to play out slightly differently for 13–14 year old boys than for girls. Boys are more likely than girls to perceive hitting as justified, and much less likely to tell another adult about abuse they have experienced from a girlfriend or partner; girls are more likely to notice violence between parents or other adult carers and are more willing to consider seeking support from an adult when they are hit by a boyfriend or partner.

The implications of this for prevention work are complex, but arguably preventative interventions aimed at 13–14 year olds need to acknowledge the possibility that many will have already experience abuse within their own relationships, or have witnessed it at home, and have experiences of dealing with it alone. Interventions need to be sensitive to the possibility that individual young people's attitudes are often informed both by such experiences of dealing with abuse and by wider levels of peer acceptance. They need to be alive to gender difference, but not to the neglect of the considerable overlaps in boys' and girls' experiences and attitudes. Indeed, within the 13–14 year old age range the difference between girls and boys tends to lie less with what they have done or what has been done to them, and more in their relative reluctance to engage adult authority in problems in their own relationships.

References

Barter, C., McCarry, M., Berridge, D., and Evans, K. (2009) *Partner exploitation and violence in teenage intimate relationships*. London: NSPCC.

Jacobson, J. Bhardwa, B., Gyateng, T., Hunter, G. and Hough, M. (2010) *Punishing Disadvantage*. London: Prison Reform Trust

About the authors

David Gadd is currently Chair of the Board of Criminology and Director of the Centre for Criminology and Criminal Justice at Manchester University School of Law.

Claire Fox was formerly a Research Associate in the School of Social Relations on a project to evaluate the work of the NSPCC Schools Teams (2001–2003), and a member of the research team based at the University of Birmingham responsible for the National Evaluation of the Children's Fund. She rejoined Keele in September 2004 as a Teaching Fellow and Learning Support Tutor and became a lecturer in September 2005.

Mary-Louise Corr joined the School of Law as Research Associate in October 2011. Prior to this she was based at Keele University. She completed her PhD at Trinity College Dublin in 2011.

Feature

Hearing the unheard voices

David Woodger

Last summer saw the worst rioting in a generation across London and other cities in England. In the aftermath of these riots, there was much speculation about the catalyst for such violence and disorder. The episode threw the spotlight onto the issue of the growing numbers of young people becoming involved in violent crime. Recalling the words of Martin Luther King, the riots were labelled as ‘the voice of unheard youth’.

A recent government report on the riots revealed three key findings:

- more than two thirds of the young people involved were classified as having special educational needs (SEN)
- more than half were from black and Asian communities
- one third had been excluded from school in the past year.

Since 2009 the Community and Youth Work team at Goldsmiths, led by David Woodger, has been undertaking research into some of the reasons behind young people becoming involved in gang and knife crime. The team worked closely with a number of local schools and met with a group of selected young people who were experiencing difficulties at school and were classed as at risk of offending. Over a period of 12 months, relationships were built with these individuals in order to understand the challenges and issues they faced. The research meant working with students from three inner-city schools, engaging them in extensive interviews and small focus groups. It examined each pupil’s experience from primary to secondary school with a focus on looking at the impact of school-based interventions with regards to behaviour; the quality and creativity of the teacher/young person relationship; the curriculum and also the impact of external agencies’ interventions.

The vulnerability of this group of young people and their escalating involvement in crime became shockingly apparent while the research was taking place. Tragically, during the project, two of the young people died as a result of knife stabbings – one of which was gang-related. One further young person was convicted and sent to a Young Offender Institution. Nine of the remaining 24 participants were eventually permanently excluded from their schools. All of the young people were frequently given fixed-term exclusions.

The impact of these exclusions from school were found to have an extremely high correlation to involvement with gangs or in crime. This was particularly the case with permanent exclusions. In order to understand the behaviour which led to the exclusion, the research had to connect with the young people



and gain their confidence. The process involved developing trust and mutual respect. None of the young people involved felt they had ever been able to share their stories. They could rarely recall a time in their school life when they had been listened to or heard. The process of reflecting on their stories, with an interviewer and in groups, proved to be a very powerful experience.

Two other factors highlighted by the research were the issues of race and the young people's educational needs. All the young people involved, apart from one white young woman, were black. Each black young person described the significance of racism in their lives both in and out of school, which was either ignored or denied as relevant to their school experience. In addition, a quarter of this group had special educational needs. Whilst this was recognised and supported by the SEN departments, the young people reported that when they were in the mainstream lessons teaching staff rarely responded to their needs. This often resulted in behaviour difficulties and consequent exclusion from the lesson.

As part of the research, hundreds of incidents that had taken place in schools were reviewed; from low-level arguments with staff, to more serious actions that had resulted in short fixed-term exclusions. These had a damaging effect on the young people's behaviour. The school's responses to these incidents indicated that they failed to contextualise or empathise with the experiences of these young people and their experience of being in school, the community and their family. Instead, a model of blame and punishment was adopted, where these young people frequently experienced discrimination, where they were negatively labelled by individual teachers or by the school senior staff.

The students expressed a lack of hope and were pessimistic about the schools' ability to respond positively towards them. They recognised that this had affected their ability to learn. For most of the group finding and developing a supportive relationship in school was rare. However, where these relationships were established, they were significant for the research as they provided an example of the skills, qualities and attitudes required to effectively engage with these young people.

Since the research was completed, the findings have been shared with the partner schools and other agencies. Through discursive workshops, those involved have been able to analyse the outcomes of the project and reflect on current practice. It is hoped that by working together, professionals and agencies will be able to adopt a more flexible and responsive approach. The research revealed that the quality and nature of the relationships developed by education professionals and agencies with these young people is instrumental in supporting transformations in their lives. As well as identifying further training opportunities and support for education professionals, the research will also feed into the teaching of community and youth work students at Goldsmiths' College. For all of these groups though, one thing is clear – the ability and decision to listen to young people is the first and most important step.

A version of this article has previously appeared in the Goldsmiths' College alumni magazine Goldlink (Winter 2011 no36).

About the author

David has been active in community development and working with young people for 30 years. He has written and published on race and adoption, institutional racism and group work. He has undertaken work on numerous school issues including exclusions, truancy, sex and relationship education, learning and teaching and introducing group work approaches to teaching. David teaches organisation and management, race, identity and institutional racism, international development and a range of social policy areas and community and youth work at Goldsmiths College, University of London.

David is keen to discuss the research with individuals who are working in the field. You can get in touch at d.woodger@gold.ac.uk

Feature

'In defence of the defence': Why the counsel for the accused deserve more academic attention

Dr Tom Smith

Criminal defence lawyers advance and protect some of the most fundamental rights of citizens in liberal democratic societies. Legal representation and assistance is a central principle of due process: whether needed in the police station or the dock and whether delivered by barristers, solicitors, higher court advocates or accredited representatives.



The wide recognition and vital importance of this right is exemplified by the United Nation's Havana Declaration, a set of principles relating to the role of lawyers (Office of the High Commissioner for Human Rights, 1990). The first of these principles states that '[a]ll persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.' This is an unambiguous acknowledgement of the significance of legal assistance to the fairness of criminal proceedings.

The principle is replicated in International, European, and English and Welsh domestic law. The Rome Statute of the International Criminal Court states that someone accused of a criminal offence has the right to 'conduct the defence in person or through legal assistance of the accused's choosing' (UNCHR, 1998). The European Convention on Human Rights and Fundamental Freedoms guarantees the right of people charged with a criminal offence to 'defend himself in person or through legal assistance of his own choosing' under Article 6(3)(c).

The EU's ongoing 'Stockholm Programme' provides further evidence of how crucial legal assistance is to fair criminal proceedings. The programme includes a European Council 'roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings', a key feature of which is 'the right to legal advice (through a legal counsel) for the accused person in criminal proceedings at the earliest appropriate stage' – described as 'fundamental in order to safeguard the fairness of the proceedings'. In England and Wales, the right to legal assistance afforded by the European Convention on Human Rights has effect through the Human Rights Act 1998, and is supported by centuries of case law.

In contrast to such overwhelmingly authoritative recognition, it is arguable that many inside and outside of the legal-academic community underestimate the value of the defence lawyer. This is particularly true of members of the public. Raymond Brown suggested that:

[a] Delegate of the Estate of Real People would probably ask “Aren't most good lawyers bad people? Don't they represent horrible clients and use clever technicalities to thwart true justice... (Brown, 1999).

As professionals paid to shield alleged offenders, defence lawyers are regarded almost as enemies of justice by some; obstructers of fairness engaged in a role which few people endeavour to comprehend and many more disparage. The media's tendency to perpetuate the enduring image of defence lawyers as deceptive and untrustworthy is well-worn and has stifled a more balanced and realistic debate in the public domain. As such, the criminal defence profession is 'disdained, mocked and unappreciated in both the popular and the legal culture' (Ibid.). Yet, it is not unreasonable to assume that the average citizen expects a defence lawyer to be on 'their side' should they need one; that their lawyer will be suitably qualified and competent to protect their interests, and will work diligently for them alone.

It is uncertain what proportion of the public in England and Wales are aware of the universal right to a defence lawyer and what that service provides. In a recent study, 54 per cent of a sample of respondents who had been arrested reported that they sought legal assistance at the police station (Kemp, 2010). For those respondents who did not, a major reason for declining representation was the belief that legal assistance was unnecessary. Kemp has argued that this belief often stemmed from a lack of understanding of what was happening at the police station and ignorance about the right to free legal representation. Beyond this, one can only speculate about the level of awareness members of the public have of this right.

Defence lawyers are entrusted with critical responsibilities within the criminal justice system – to protect and defend some of the most vulnerable individuals in society, and to ensure that criminal proceedings are legitimate, justifiable and legal. Yet only a limited number of British academics have devoted attention to scrutinising the nature and scope of this vital role in recent years. This dearth of focused research in England and Wales contrasts with American scholars – particularly David Luban, Monroe Freedman and William Simon – who have dominated the debate about legal ethics over the past 40 years, and have written extensively about the obligations and duties of adversarial lawyers. The result is an under-developed body of modern academic discourse contemplating the work and role of defence lawyers in this jurisdiction. This is particularly surprising since the last decade has seen the defence role experience significant and unprecedented change.



Since their inception in 2005, the Criminal Procedure Rules have reshaped the landscape of criminal justice and substantially impacted on the role of the defence lawyer. The defence lawyer is now obliged to deal with a case

efficiently and expeditiously, identify at the early stage the 'real issues' and provide information about witnesses, written evidence, and points of law. These obligations may run counter to the defendant's interests. Arguably the duty of 'convicting the guilty' (one of the 'overriding objectives' of the Rules) is certainly at odds with the accused's interests. Yet, the defence lawyer is obliged to help the court fulfil this overriding objective: does this, by extension, include convicting his or her client? One must presume it does, making for a very controversial conflict between the defence lawyer's duty to the defendant and the court.

The Rules continue to be updated and remain an issue of crucial importance in the sphere of criminal defence work. More recently, the government attempted to cripple the universal right to legal assistance in the police station by making it subject to a means-test. The highly controversial provision – contained in clause 12 of the Legal Aid, Sentencing and Punishment of Offenders Bill (LASPO) – would have allowed the police to require vulnerable suspects to produce personal financial information in the police station in order to justify legal assistance. The provision would have almost certainly fatally undermined the 'unfettered' universal right to a defence lawyer at the most dangerous stage of the criminal process. The government withdrew clause 12 – but the saga sent an unmistakable message that the pivotal role of the defence lawyer is not immune from axe of the Coalition Government.

This near miss as well as the shrinking budgets of criminal defence firms representing suspects in police stations were given a worrying context when, after seven years in prison for murder, 25-year-old Sam Hallam was freed; a victim of a miscarriage of justice caused by 'ineptitude and at worst by dishonesty on the part of some police officers' (*The Guardian*, 2012). Arguably, as changes to the defence profession occur, the threat of more grave injustices looms large.

Another recent signal of the changing context in which the defence lawyer must operate is the 'Stop Delaying Justice!' campaign. Rolled out at the close of 2011, the policy initiative is a spiritual successor to the 'Criminal Justice: Simple, Speedy, Summary' (CJSSS) strategy, sharing the common aims that proceedings in magistrates' courts should be 'fully case managed' from the outset. This requires that cases be shorter and more efficient, with fewer delays. Fears have been raised about the effect of such a focused drive on the legitimacy and fairness of summary proceedings for the defendant. The place of the defence lawyer in this scheme is fraught with difficulty; the court expects them to deliver speedy pleas and hasty disclosure, whilst the client they serve depends on them for protection and representation.

To some extent, all of the changes mentioned above – and myriad examples omitted – have generated confusion and uncertainty about what the defence lawyer's role is, with more potential ethical conflicts for defence lawyers to resolve than ever before. Of the few academics who have broached the subject, some have suggested that such changes herald a shift away from an adversarial criminal process in England and Wales, towards a more managerial and even inquisitorial style of criminal justice. Consequently, the traditional principles of zealous and detached partisanship which have underpinned criminal defence representation have been undermined. Despite

this, such substantial issues have attracted limited attention outside of the circle of practice.

The criminal defence lawyer should undoubtedly feature more prominently in academic literature and commentary. It is a crucial element of the adversarial criminal justice system which – some would argue – is under attack. Such changes are profoundly distorting the relationship between defence lawyers, clients and the Court. It is time for scholars, practitioners and policymakers to have a frank debate about this.

References

Brown R. (1999) *The “Good Person” Question: Valid Query or Hobson’s choice?* Journal of the Institute for the Study of Legal Ethics pp. 153–154.

Office of the High Commissioner for Human Rights (1990). *Basic principles on the role of lawyers*. Available at: www.ohchr.org/Documents/Publications/training11en.pdf [accessed June 2012].

Kemp, V. (2010). *Transforming Legal Aid: Access to criminal defence services*. Available at: http://www.lccsa.org.uk/assets/documents/transformingcrimdefenceservices_29092010.pdf [accessed June 2012].

The Guardian (2012). *Sam Hallam walks free*. Available at: <http://www.guardian.co.uk/uk/2012/may/16/sam-hallam-released-seven-years?INTCMP=SRCH> [accessed May 2012].

UNCHR (1998) *Rome Statute of the International Criminal Court* (last amended January 2002). Available at: <http://www.unhcr.org/refworld/docid/3ae6b3a84.html> [accessed May 2012].

About the author

Dr Tom Smith is a Research Assistant for the Law and Criminal Justice Centre at Plymouth University.

Member Profile



Gemma Anslow
PhD researcher and visiting lecturer
Centre for Law Justice & Journalism, City
University, London

With a father, grandfather and great grandfather having worked within prisons in various capacities, it was inevitable that I was to develop an interest in penology. Having visited several prisons and spent time with those inside, the study of prisons and punishment remains a major focus of my research. I developed a specific interest in criminal justice policy for women whilst working as a researcher in the House of

Commons and began to follow with great interest those dedicated MPs, Lords and campaigners and their calls for increased government attention on this historically overlooked matter. Parliamentary groups, such as the APPG for Women in the Penal System provide excellent forums for debate to help keep this critical issue firmly on the political agenda.

I am currently undertaking my PhD at the Centre for Law, Justice & Journalism at City University, London. The Centre aims to develop a broad interface between law, justice and journalism in society, and it is in this spirit that my research spans the areas of media criminology, public policy and penology. My work seeks to examine the complex interrelationship between the women's penal reform movement, the media, and policy makers at the crime-media nexus. Situating the policy problem of women's imprisonment in the context of the government's 'rehabilitation revolution', it researches exactly how progressive lobby groups such as the Howard League seek to influence penal reform in the face of 'penal punitivism', media proliferation (with developments such as Facebook, Twitter and the growing 'blogosphere') and the politicisation of law and order.

During my second year I have been busy teaching both criminology and social policy, and have been conducting interviews with campaigners (including Frances Crook, Chief Executive of the Howard League), academics, civil servants from the Ministry of Justice, MPs and Lords. Recent meetings with journalists have also helped in developing a picture of the current landscape. I hope my findings prove useful to those working in this area, and I aim to discuss strategies for use (or not) of the media from a lobbying perspective, the framing of policy issues for women in prison, and journalists' views on penal reform.

I find the Early Career Academic Network provides a useful resource for all those engaged in criminological or legal research, the bulletins in particular are always topical and extremely informative. My doctoral studies have been greatly enhanced by being part of a growing research network engaged in the area of prisons and penal reform within the wider criminological community.

Get involved

Community Sentences Cut Crime conference

The Howard League for Penal Reform is holding a conference on the future of the criminal justice system and the role of community sentences and the courts. It will also discuss the Howard League's Community Sentences Cut Crime campaign, which encourages public and government support for successful community sentences. The conference will include the Community Programmes Awards 2012, recognising the country's most successful community programmes.

Speakers will include:



- Ged Bates, Offender Management Lead, Probation Chiefs Association, and Director of Operations, Staffordshire and West Midlands Probation
- Sally Bercow, political activist, media personality and writer
- Tom Brake MP, Co-Chair, Liberal Democrat Backbench Committee on Home Affairs, Justice and Equalities
- Frances Crook OBE, Chief Executive, the Howard League for Penal Reform
- John Fassenfelt JP, Chairman, Magistrates' Association
- Aubrey Fox, Director of Strategic Planning, Centre for Court Innovation
- Ben Gummer MP, Justice Select Committee
- Helen Judge, Director of Sentencing and Rehabilitation, Ministry of Justice
- Professor David Wilson, Birmingham City University and Vice-chair, the Howard League for Penal Reform
- Young judges from the Howard League for Penal Reform's U R Boss Project



There will be plenary sessions with time for questions and debate. An exhibition of shortlisted awards programmes will be open for viewing throughout the event.

The conference is a great opportunity for networking and exchange of ideas and is available to practitioners and policymakers at all levels, including academics, researchers, probation, youth offending teams, NOMS, prison service, children and family services, magistrates and members of the judiciary, police service, politicians and councillors and community organisations.

The conference will take place on Thursday 19 July, 10.15am–4.00pm at The Kings Fund, 11–13 Cavendish Square, London W1G 0AN

Book your place online at: <http://www.howardleague.org/community-awards-conference2012>

For more information, please contact: barbara.norris@howardleague.org

Get involved

Book reviews

We are looking to introduce a new section to the ECAN bulletin: book reviews. I would really like our members to take the time to appraise the latest contributions to the wider body of criminological knowledge. We already have three books waiting to be reviewed:

- *Breaking Rules: The Social and Situational Dynamics of Young People's Urban Crime* by Per-Olof H. Wikström, Dietrich Oberwittler, Kyle Treiber and Beth Hardie
- *Most Deserving of Death? An Analysis of the Supreme Court's Death Penalty Jurisprudence* by Kenneth Williams
- *Sentencing and Punishment: The Quest for Justice (third edition)* by Susan Easton and Christine Piper

If you are interested in reviewing any of these books, or you would like to review future books please email Eleanor Biggin-Lamming at eleanor.biggin-lamming@howardleague.org and let her know your area of academic interest/expertise.

Guidelines for submissions

Style

Text should be readable and interesting. It should, as far as possible, be jargon-free, with minimal use of references. Of course, non-racist and non-sexist language is expected. References should be put at the end of the article. We reserve the right to edit where necessary.

Illustrations

We always welcome photographs, graphic or illustrations to accompany your article.

Authorship

Please append your name to the end of the article, together with your job description and any other relevant information (e.g. other voluntary roles, or publications etc.).

Publication

Even where articles have been commissioned by the Howard League for Penal Reform, we cannot guarantee publication. An article may be held over until the next issue.

Format

Please send your submission by email to anita.dockley@howardleague.org

Please note

Views expressed are those of the author and do not reflect Howard League for Penal Reform policy unless explicitly stated.